To Be Argued By:
Stephen Rackow Kaye

New York County Clerk's Index No. 107871/03

New York Supreme Court

APPELLATE DIVISION — FIRST DEPARTMENT

In re the Application of:

NEW YORK PUBLIC INTEREST RESEARCH GROUP STRAPHANGERS CAMPAIGN, INC., GENE RUSSIANOFF, DAVID A. PATERSON, EDITH PRENTRISS, KATHERINE ROBERTS, KEITH CAUSIN, KEVIN MCRAE, FARAH STEIDE, and ALEXANDER WOOD,

Petitioners-Respondents,

and

ROGER TOUSSAINT as PRESIDENT OF LOCAL 100
TRANSPORT WORKERS UNION OF AMERICA,

Petitioner In Intervention-Respondent,

against

METROPOLITAN TRANSPORTATION AUTHORITY a.k.a. MTA, MTA NEW YORK CITY TRANSIT AUTHORITY, LONG ISLAND RAILROAD, METRO-NORTH RAILROAD, STATEN ISLAND RAPID TRANSIT OPERATING AUTHORITY, LONG ISLAND BUS COMPANY, Peter S. Kalikow, Chair/Commissioner of the Metropolitan Transportation Authority and Lawrence G. Reuter, as President of MTA New York City Transit Authority, XYZ Corp.'s 1-20, private bus company and others under contract with the named Respondents to supply transportation services to the public whose corporate identities are unknown and to be determined in discovery,

Respondents-Appellants.

BRIEF FOR RESPONDENTS-APPELLANTS

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QUESTION PRESENTED

Whether there are legally sufficient grounds in this CPLR Article 78 proceeding to determine that the appellant governmental agencies, in the exercise of their quasi-legislative authority under the Public Authorities Law, violated PAL §§ 1205[7] and 1263[9] in adopting a fare increase and in approving the closure of certain station booths.

The court below answered this question in the affirmative notwithstanding its conclusion on undisputed facts that the Metropolitan Transportation Authority ("MTA") complied with all of the requirements of PAL §§ 1205[7] and 1263[9].

PRELIMINARY STATEMENT

For the first time in the history of New York City's regional mass-transportation system, a court has issued a permanent injunction barring an increase in subway and bus fares and other related actions. (R9-30.)[1] The decision is remarkable because no prior court (despite many legal challenges to fare hikes) has ever so overstepped the established bounds of judicial review of the MTA's authority under the Public Authorities Law, and because this is the first fare increase in eight years, the longest this system has gone without an increase since the 1960s. The decision is doubly remarkable because the lower court, in issuing its unprecedented decree, acted on a record that, on its face, required the dismissal of the petition:

> It is uncontroverted that the MTA, like the City and State governments, is facing a multi-billion dollar deficit.

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[1] The letter "R" followed by a number refers to pages in the record on appeal.

It is uncontroverted – and indeed conceded by petitioners – that an immediate fare increase is necessary.

It is uncontroverted – and indeed so held by the lower court – that the MTA complied with the Public Authorities Law's specific statutory notice and hearing requirements prior to the MTA's Board adopting the new fare.

It is uncontrovered – and indeed acknowledged by the lower court – that all funds at issue were allocated to the MTA's obligations over 2003-2004, the remaining two years of the MTA's current financial planning period.

These and other uncontroverted facts should have ended the court's inquiry, under a vast body of law regarding the limited scope of judicial review of governmental decision making. (*See* Points A and D.) Instead, the court ignored the rule that where the specific requirements of the governing statute have been met and where the resulting governmental action bears a reasonable relationship to and is derived from the proposals presented to the public, petitioners must look to the legislative and executive branches of government to address their complaints. (*See* Point B.)

Accepting at face value, without critical analysis, the characterizations contained in the report issued by the State Comptroller on April 23, 2003 (the "Report") (R1424-70) and entirely ignoring the MTA's rebuttal of its conclusions, the lower court erroneously concluded that the MTA had misled and deceived the public by premising the proposed fare hike on a "fictitious" $2.8 billion budget gap for 2003-2004. (R24.) On that basis, the court voided the notice of public hearing, nullified the MTA Board's March 6, 2003 unanimous vote adopting the fare hike and other related actions, to take effect in early May, and ordered the MTA to roll the fare back to the pre-May level.

The lower court's conclusion that the MTA engaged in financial improprieties, resulting in its unprecedented

intervention into government decision-making, was unsupported by the record, internally inconsistent and erroneous. There is simply no factual support either in the decision itself or elsewhere in the record for the lower court's conclusory finding that the MTA misrepresented its financial condition. Indeed, the lower court's central finding that $512.5 million was somehow improperly "shifted" out of the budget, thus skewing the deficit and misleading the public regarding the MTA's financial condition, is not only erroneous, but contradicted by the decision itself. The $512.5 million of the cash balance at the end of 2002 was allocated to cover expenses and contingencies over the next two years, 2003-2004, thereby helping to reduce the budget gap for that combined two-year period. Although the lower court acknowledged that these funds were allocated to 2003-2004, it appears to have believed that, because this cash balance was not reflected as a "surplus" at the end of 2002, the public hearings were predicated on a "budget gap of $2.8 billion which did not exist . . . ." (R23-24.)

The lower court's assertions on this key point are not only inexplicable, but the record is uncontroverted that the $512.5 million, along with other cost savings measures, was utilized to help reduce the $2.8 billion two-year deficit to approximately $1 billion. It was this remaining budget gap that was to be eliminated by the proposed fare increases and related actions. It is the decision below, not the public hearings, that was predicated on an erroneous premise. (*See* Point C.)

Stripped to its essence, the issue was not "false and misleading" financial information – there was none – but whether the MTA had a legal duty to present the public with an alternative financial plan – one that was not under consideration – that allocated the cash balance available at the end of 2002 solely to 2003. There is no such legal requirement. Moreover, that approach, while eliminating the need for an immediate fare increase in 2003, would have pushed the entire budget deficit into 2004, requiring a substantially greater increase. On this issue, even the

Comptroller's Report, while criticizing the MTA *procedurally* for not presenting a one-year budget balancing option, and charging the MTA with having falsely "created" a deficit for 2003, simultaneously found that it would have been "imprudent" to apply all cost savings to 2003 alone, and that doing so would have "widened the 2004 budget gap by an equal amount." (R1428.) This fundamental contradiction reflects the utter lack of substance to the charges of deceptive financial practices that underlie the lower court's decision.

In the final analysis, no cognizable dispute was presented to the lower court, much less one that justified absolutely unprecedented judicial action. The decision below should be reversed and the petition dismissed.

NATURE OF THE CASE AND FACTUAL BACKGROUND

The MTA is an umbrella organization for eight operating agencies responsible for transit in and around the New York metropolitan area, including the appellants New York City Transit Authority ("NYCTA"), Metro-North Commuter Railroad, Long Island Rail Road, Staten Island Rapid Transit Operating Authority, and the Long Island Bus Company.[2] The agencies are collectively responsible for one of the largest mass transportation systems in the world, serving over 2.3 billion passengers a year.

By statute, the MTA and the NYCTA are required to operate on a "self-sustaining" cash basis, *i.e.*, to pay operating expenses, debt servicing costs and maintenance and repair of its systems out of revenue and other income. PAL §§ 1266[3]; 1205[1]. They cannot operate at a cash deficit.

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[2] Each of the agency appellants other than NYCTA is a subsidiary of MTA, fully subject to the provisions of the MTA statute, Public Authorities Law §§ 1261-1279. NYCTA is an affiliate of MTA, subject to its own statute, Public Authorities Law §§ 1200-1221, as well as certain provisions of the MTA statute.

Accordingly, the Legislature has authorized the MTA and the NYCTA to establish fares at levels that are necessary to satisfy the self-sustaining requirement. A public hearing is required before the MTA can establish fares, but the ultimate decision is committed to the agency's "judgment." PAL § 1266[3]. The contents of the notice of such hearing are specified by the statute. PAL § 1263[9](a)-(f). The NYCTA is not statutorily required to hold a hearing prior to establishing new fares, but, should it choose to do so, the public notice thereof is governed by the exact same requirements. PAL § 1205[7](a)-(f).

The MTA Financial Planning Process

As an umbrella agency, the MTA is responsible for preparing a financial plan for the regional transportation system. This requires an ongoing budget process to anticipate the availability of revenues (such as projected fares and tolls and government subsidies) necessary to satisfy ongoing obligations (such as debt service, maintenance of facilities and services, security expenses and labor costs). (R1727-29.)

The MTA engages in multi-year financial planning and is currently in the last two years (2003-2004) of a five-year planning process that began in 1999. The multi-year operating budget is designed to coincide with the current capital plan that also expires in 2004. (R1727, R351.) Because of the legal obligation to operate on a self-sustaining basis, long-term planning is essential in order to ensure that the transportation system can be operated in a safe and reliable manner and that obligations to bondholders, employees and vendors can be met. In furtherance of the goal of fiscal stability, the MTA generally seeks to allocate the benefits of any non-recurring opportunity over the course of its multi-year financial plan. (R1727, R1534.)

As would be expected, the magnitude of this effort is enormous in light of the MTA's $7-8 billion operating budget and its broad mandate to provide an essential public service. Hundreds of budget professionals and support staff are

involved in this massive undertaking. Computerized systems, generating thousands of pages of financial information, are utilized at the agency and MTA levels in preparing and revising the budget estimates. (R1727-28, ¶ 6.)[3]

The preparation of a multi-year financial plan, such as the MTA's, requires the application of professional judgment and discretion to determine when many cash transactions should take place. Expenditures that can be made in one year (or one month, for that matter) may be better made at a different time in order to manage available resources in a prudent matter over the life of the financial plan. (R1534-35.) There was no basis whatever for the lower court's reliance on charges of "shifting" money (R23-24) and "secret transactions" (R19) and thus no basis for it to conclude that the MTA had misled the public regarding its financial condition, requiring that the March 6 vote be overturned. (R24.) Reasoned determination as to the allocation of cash resources is what prudent financial planning is all about, a matter that the lower court completely misperceived.

By necessity, the actual financial plan, including budgets, submitted to the MTA Board for approval could not possibly contain the thousands of pages of information generated through the budget process. The plan must necessarily be a summary and distillation of the enormous volume of documents and electronic information that was accumulated,

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[3] It is important to recognize that budgeting for financial planning purposes is different from preparation of audited financial statements. Financial statements are prepared *retrospectively* pursuant to Generally Accepted Accounting Principles ("GAAP") to account for financial transactions that took place in the previous year. The MTA engages the accounting firm of Deloitte & Touche to audit its yearly financial statements. Budgets, by contrast, are prepared *prospectively* on a cash basis. Budgets necessarily involve assumptions and professional judgments regarding events that are yet to transpire, including projected revenues and expenses, and a weighing of the risks and likelihood that certain events will occur. (R1728, n.2; R1541.)

marshaled and analyzed in order to make the assumptions and judgments that constitute the actual plan presentation document. (R1728, ¶ 7.) The 250-page document referred to in the record as the "super spreadsheet" (R1170-1422), which has been mischaracterized as a "second set" of books (R1434), is simply a detailed version of the plan submitted to the Board, designed for use by the MTA's professional budget staff. Thus, the plan submitted to the Board was a summary presentation of the information contained in the "super spreadsheet" and therefore there was no "second set" of books. *See infra*, p. 28.

The MTA's Budget Deficit

The national recession and the events of September 11 have had a serious negative impact on the MTA's financial condition. As reflected in its audited financial statements, on a GAAP basis (including depreciation and other non-cash items) the MTA lost $1.120 billion in 2001 and $1.306 billion in 2002. The budget was nonetheless balanced on a cash basis for these years without fare and toll increases by taking advantage of certain non-recurring receipts and cost saving measures. (R1729, ¶ 9, R1534.)

In November 2002, the MTA projected a budget gap in its operating budget for the remaining years of the financial plan, 2003-2004, of $2.8 billion in cash. (R1729, ¶ 10.) In order to address this looming deficit, the MTA proposed various Programs to Eliminate the Gap ("PEGs"), which were set forth in an interim financial plan approved by the MTA Board on December 18, 2002 (the "December Plan"). (R99-312; R319-25.) The December Plan reflected the MTA's multi-year approach to eliminating the budget deficit. All of the proposed PEGs were allocated over the combined two-year period and reduced the $2.8 billion gap to approximately $1 billion. (R273; R319-25, 1729.) It was this remaining approximate $1 billion that was referred to in the notice of public hearing, and that was proposed to be eliminated by the proposed fare increase and other actions. (R61.)

A major item of cost savings achieved in 2002 was debt restructuring savings in the amount of $630 million. (R1526, ¶ 8, R1531, R1534.) Savings from this "one shot" measure first became available in 2002 and were slated to be utilized over the combined two year period, from January 2003 through December 2004, and were reflected as such in various public presentations from November 2002-February 2003. (R1534; R1730.) Included in the debt restructuring savings was the $512.5 million that the court below erroneously concluded (R24) was "moved" out of 2002, thus reducing the "surplus" at the end of that year. In fact, the record is clear that this $512.5 million was allocated to help bring down the $2.8 billion deficit for 2003-2004. (R1534; R1448; R1544-45.) The notion that funds were improperly "moved" or "shifted" misrepresents the standard budgetary process whereby the agency professionals must determine when and how to allocate cash for various expenditures. (R1537; R1727.) (*See supra,* pp. 6-7.)

In addition to the $630 million in debt restructuring savings, the MTA was able to close the two-year $2.8 billion gap by $1.02 billion in agency budget cuts, $30 million in comparable restructuring savings, and by projecting an additional $121.3 million in governmental assistance in the 2004 year.[4] (R1526, ¶ 8.) These combined programs closed approximately $1.8 billion of the two-year, $2.8 billion budget gap. (R1527, ¶ 10; R273.)

Each of these programs, and their cost savings, were factored into the December Plan. (R273.) The December Plan, captioned "MTA-Wide Financial Plan 2002-2004," was presented at the public meetings of the Finance Committee of

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[4] The State Comptroller has disputed the projection that this additional aid will be available. (R1447.) This dispute emphasizes the judgments and uncertainties inherent in any financial planning process. Moreover, should the Comptroller's projections prove to be accurate, the result would be fewer available resources for the MTA, resulting in an even wider budget gap. (R1526-27, ¶ 9.)

the MTA Board on December 16, 2002 and the MTA Board of Directors on December 18, 2002. (R99-312.) The December Plan stated explicitly that it was an "Interim" plan (R273) and presented "potential solutions" for closing the remaining approximately $1 billion deficit for 2003-2004, including a mix of fare and toll increases, station booth closings, and various service cuts or reductions. (R1547-48.) The December Plan noted that any such options contemplated implementation of a public hearing process and other necessary legal requirements. (R273.)

The MTA Board approved the December Plan, authorizing the MTA and its agencies to initiate the public hearing process regarding proposals to increase fares and tolls and the other actions under consideration consistent with the various applicable statutory provisions. (R1730.)

The Notice and Public Hearing Process

Following its Board's approval of the December Plan, the MTA began a public hearing process. Pursuant to PAL § 1266[3], the MTA subsidiaries are required to have "a public hearing" prior to effecting any changes in fares. The MTA affiliates are not subject to this provision. The Triborough Bridge and Tunnel Authority, for example, has no public hearing requirement prior to raising bridge and tunnel tolls in its governing statutes, PAL §§ 552 and 553. NYCTA is required to hold a public hearing prior to closing any station booths, but is not statutorily required to do so prior to raising fares on buses and subways. PAL §§ 1205[1], [5]. Regardless of these varying requirements, however, the MTA determined to have a single public hearing process (although it held ten hearings rather than only one). (R1795-96.)

The Legislature has set forth specific and detailed requirements for public hearings conducted by the MTA subsidiaries and the NYCTA (where it proposes to close station booths or determines to hold a hearing with respect to a proposed fare increase):

> Whenever the authority causes notices of hearings on proposed changes in services or fares to be posted pursuant to this section or any statute, regulation, or authority policy, or where it voluntarily posts such notices, such notices shall
>
> (a) be written in a clear and coherent manner using words with common and every day meaning;
>
> (b) be captioned in large point type bold lettering with a title that fairly and accurately conveys the basic nature of such change or changes;
>
> (c) where such change involves a proposed change in levels of fare, include in its title the range of amounts of fare changes under consideration;
>
> (d) contain, to the extent practicable, a concise description of the specific nature of the change or changes, including but not limited to a concise description of those changes that affect the largest number of passengers;
>
> (e) where such change involves a change in the nature of a route, contain, to the extent practicable, a clear graphic illustration of such change or changes; and
>
> (f) where such change involves a partial or complete station closing, such notice shall be posted at the affected station with a clear graphic illustration depicting the nature of any closing for such station.

PAL §§ 1263[9], 1205[7]. It is undisputed that the MTA and NYCTA complied with each and every element of these

requirements. Indeed, the court below concluded each was fulfilled, although it wrongly minimized this compliance as "technical." (R21.)

The Notice of Public Hearing, captioned in bold letters "Notice of Public Hearings on Proposed MTA Fare Increases, Fare Policy Changes, Subway Station Booth Closings and Toll Increases," set forth a description of the range of potential increases under consideration, in compliance with subparagraphs (b) and (c) above, identified the 177 station booths proposed to be closed and set forth the dates, times and location of the hearings. (R61.) The public was apprised of three options under consideration for closing the budget gap, including different fare structures and potential service cuts. (R61-63, R1958.)

Notices were posted in all subway stations[5] and on buses and trains, were posted on the MTA's Web site, and published in eleven different local newspapers, and handed out at the public hearings. (R61, R1798, R1801, R1802, R1958.)

The MTA held not just the one hearing required by the statute, but ten different hearings in locations throughout the service area during the month of February 2003. Approximately 350 persons spoke at these meetings, expressing their views. Written comments were also received through a Web site function the MTA had created for that purpose. (R1798-99, ¶¶ 8-11.) This public comment made clear that the public had in fact received the specified notice, and that there was particular concern with respect to service cuts and the proposed closing of 177 station booths. In response, the MTA scaled back its proposed number of

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[5] As required by PAL § 1205[7], the Notices posted in subway stations where booths were proposed for closing included a detailed graphic of the station setting forth the proposed booth closing. (R1797, ¶ 6.)

station booth closings from 177 to 62 and chose to fill its budget gap through additional revenue rather than through additional savings via service cuts. (R1809 ¶ 3, R1547-48.) Also in response to public comment, the MTA determined to adopt various MetroCard discount programs and specials, to begin a "CityTicket" experiment, and to implement insurance for 30 day MetroCards. (R1809.)

On March 6, 2003, the MTA Board met to consider the proposals for fare increases, including the changes made to such proposals as a result of the public hearings and comment. After hearing additional public comment (there were 57 speakers (R1799, ¶ 11)), it approved a package of fare and toll increases for buses, subways, commuter railroads, and bridges and tunnels, and further approved the closing of 62 part-time station booths in certain stations. (R1548.) The matters voted on by the Board on March 6 were precisely the matters presented at the public hearings.[6] (R1731, ¶¶ 17-18.) The increases were to be implemented during the month of May 2003.

On March 27, 2003, the final 2003-2004 financial plan was approved unanimously by the Board (the "March Plan"). (R1965.) The March Plan reflected all of the cost saving and revenue raising measures (including the fare increases voted on March 6) that had been adopted in order to eliminate the gap for 2003-2004.

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[6] The Board thus approved a complex array of measures designed to close the remaining approximate $1 billion deficit including, *inter alia*, an increase in the base subway and bus fare to $2.00; adjustments to the one, seven and thirty day discounted MetroCards and the creation of other discount programs; increases in express bus, paratransit and commuter rail fares; increased bridge and tunnel tolls; and the closing of 62 station booths.

The Comptroller's Report

While the MTA was finalizing its various gap-closing programs and holding its public hearings, the Comptroller of the State of New York determined to review and comment on the interim December Plan. In January 2003, the Comptroller began an audit of the MTA's financial planning. This process began in the traditional way, with meetings between Comptroller staff and MTA budget officials, followed by requests for information. (*See* R313-455.) However, rather than pursuing the standard process, the Comptroller instead issued deposition subpoenas for records and testimony to four senior officials of the MTA. He further issued subpoenas for voluminous documents in 30 different categories, all to be produced within seven days, and demanded that the information be produced, not as kept in the ordinary course of business, but organized so as to be responsive to each of these categories. (R456-479.) The MTA complied with these requests within the seven-day period and thereafter appeared for days of depositions.

The Comptroller concluded his examination by issuing the Report on April 23, 2003 (along with an extensive press release). (R1424-1470.) While not challenging the need for a fare increase and effectively endorsing the MTA's multi-year planning approach, the Report contained demonstrably false accusations, including that the MTA kept "two sets" of books, had "hidden" reserves and engaged in "secret" transactions. (R1428-1431.)

The lower court appears to have largely accepted at face value the Comptroller's unwarranted characterizations of the MTA's financial planning process and to have wholly disregarded the MTA's own point-by-point response to those characterizations. (R1531-1551.) It is not our intention to involve this Court in a consideration of the relative credibility of the Comptroller's Report versus the financial conclusions and recommendations of MTA budget staff; to the contrary, the law is clear that MTA was entitled to rely upon the analyses of its own experts and a court sitting in Article 78

review may not substitute its judgment for that of the agency statutorily charged with responsibility for "establish[ing]" fares (PAL § 1266[3]). However, particularly in light of the utter absence of specific factual findings or citation to evidence within the four corners of the decision itself to support its generalized conclusions, as well as the apparent continued reliance by petitioners upon the Report, we proceed briefly to address the Report:

- The Comptroller conceded that the MTA was facing a multi-billion dollar deficit for the combined 2003 and 2004 years. The Report disputes (without explanation) only the calculation of approximately $200 million of the projected deficit, thus conceding approximately $2.6 billion of deficit. (R1443.)

- Although the Report asserted that use of all available resources in 2003 alone "would have been sufficient to avoid a fare hike in 2003," it acknowledged that use of those resources in 2003 *"would have widened the 2004 budget gap by an equal amount."* It further conceded that it would have been "*imprudent*" for the MTA to have used all of its surplus resources in 2003. (R1428 (emphasis added); *see* R1535.)

- Undermining its accusations of "hiding" money (R1428), the Report did not (and could not) assert that the MTA had used its funds for anything other than legitimate agency purposes. (*See* R1545.) The Comptroller's criticisms were aimed only at *when* the MTA determined to spend such funds, not whether the budgeted expenditures were legitimate.

- The Report did not challenge the need for a fare hike; it merely stated that the MTA had more flexibility in the size and timing of the increase, a matter of judgment committed by law to the MTA. (R1428; *see* R1535.)

- There were not "two sets of books," as petitioners alleged based on the Report. (R1895.) The December Plan was a summary presentation document that "rolled-up" various items into single line items. The "super spreadsheet" was simply a far more detailed version of the document presented to the Board, designed for use by the MTA budget professionals, from which the summary December Plan was generated. It was patently false to have termed this "two sets" of books. (R1447, 1728; *see* R1538.)

- The Comptroller asserted that the MTA should not plan on the increased governmental assistance it was projecting for 2004. Should the Comptroller's view prove to be correct, the MTA's budget gap would be larger, not smaller, than projected in its December Plan, and the need for a fare increase greater. (R1447; *see* R1544-45.)

- The Comptroller asserted that "the public hearing process [was] a sham" (R1429), a key component of the lower court's ultimate analysis. (R14.) This assertion, however, was *not* based on any allegation that the MTA did not comply fully with the statutory requirements governing its public hearings, or on any allegation that the MTA misled the public regarding the details of the options it proposed to bridge the remaining budget gap. Instead, the Comptroller based this unjustified characterization on the MTA's decision, as explained above, to present a two-year financial plan, rather than an ("imprudent") one-year plan. (R1428, R1449.)

The MTA issued a response to the Report on April 29, 2003 (the "Response"). (R1531-51.) The Response rebutted the Report on an item-by-item basis, but neither the Response nor the affidavits from the MTA's budget director submitted to the lower court were referred to in the court's decision.

Procedural History of this Litigation

Petitioners, the New York Public Interest Group Straphangers Campaign, Inc., commenced this proceeding in Supreme Court, New York County by Order to Show Cause on April 29, 2003. (R39-60.) The allegations in the petition were premised almost exclusively on the Report which it quoted at great length (R47-51), and supported by, *inter alia,* an affirmation from the State Comptroller.[7] (R68.) On May 1, 2003, petitioners amended their petition to add several individual plaintiffs, in response to concerns regarding standing. (R1590-1613.)

Petitioners asserted three causes of action, only the second of which is at issue on appeal.[8] Petitioners asserted that the MTA had violated the notice and hearing provisions of PAL § 1263[9] in that its December Plan and Notice of public hearings were purportedly false and misleading.

On May 2, 2003, the lower court denied petitioners' application for a temporary restraining order blocking the fare increases pending a decision on the merits. (R31-35.) The court determined that petitioners had not established immediate and irreparable injury would result, and that any injury to petitioners would be solely monetary. Moreover, in balancing the equities, the court noted the significant time, expense and confusion that would result were the MTA

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[7] The petition also relied on a report issued by the New York City Comptroller regarding NYCTA specifically. (R1474-1503.) The City Comptroller Report does not contain any allegations material to the present litigation which are not also contained in the State Comptroller's Report.

[8] Petitioners' first and third causes of action allege that the MTA's fare increases violated the "self-sustaining" requirement of the MTA's governing statute PAL § 1266(3), and that the MTA violated PAL § 1269-d by failing to file a five-year plan. Both those causes of action were rejected by the lower court as failing to state a justiciable claim on which petitioners could be entitled to relief. (R20-21; R26.)

forced to halt its scheduled increase of bus and subway fares, or to "roll back" its already-operating increased commuter rail fares. (R34.) Accordingly, the court allowed the increased commuter rail fares to continue, and the new bus and subway fares to go into effect on May 4.

The lower court converted the amended petition into an Article 78 proceeding and held a hearing on the merits on May 9, 2003. During oral argument, petitioners' counsel, citing analyses done by the Comptroller, advised the court that, in petitioners' view, the fare need only have risen to $1.75 for 2003, and $2.00 in 2004. (R1904.) Petitioners thus conceded that an immediate fare increase was necessary, but sought to second guess the MTA's decision regarding the precise amount and timing of the inevitable increase, essentially conferring upon themselves the right to pick and choose from among the virtually infinite number of fare, service and other policy options available to address the concededly huge deficit.[9]

The Decision Below

The lower court issued a written Decision/Order and Judgment (one paper) on May 14, 2003, granting the amended petition as to its second cause of action. (R9-30.) The court found that petitioners had standing to pursue their claim. With regard to the issue of justiciability, the court ruled that, although it was "ill equipped to run a railroad" and had no "power to evaluate the MTA's decision that a fare increase is economically necessary" (R18), it was nevertheless empowered to judicially review the narrow question of whether the MTA exercised its judgment in accordance with the statutory standards. The court concluded

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[9] It should be emphasized that taking account of various discounts available to subway and bus riders the actual average transit fare, even after the recent increase, is approximately $1.25, or 17% less than the fare as adopted at the time of the 1995 increase, before free transfers and other MetroCard discounts were available. (*See* R1959.)

that "the sufficiency of the [public hearing] Notice and adequacy of the hearing are justiciable matters." (R18.)

The lower court correctly identified the statutory requirements for public hearing notices by the MTA and the NYCTA, and found it "undisputed that the Notice complied with these requirements in a technical sense." (R21.) Rather than ending the inquiry there, the lower court went on to discuss what it considered the "underlying purposes of the laws at hand." (R22.) It held that the hearing provisions were aimed at helping the MTA to develop a reasonable fare structure within its budgetary confines and to afford the public an opportunity to express its views on that subject. The court further held that the notice of public hearing was to serve the function of advising the public of the subject matter of the proposal being considered in order that interested persons could decide whether to attend. The lower court held that, if a notice misled interested persons into foregoing attendance, it would be inadequate. (R22-23.)

The lower court proceeded to conclude that the notice of public hearing was inadequate. It said that the December Plan had "shifted" $512.5 million in resources from 2002 to 2003 and 2004, which had the effect of reducing the "surplus" at the end of 2002. In reasoning that was far from clear and at times internally inconsistent, the court then concluded that the $2.8 billion budget deficit for 2003 and 2004 "did not exist" and was "fictitious" and that, therefore, the notice referencing that deficit was false and misleading. (R23-24.) Finally, the court held that the public hearings were "fundamentally flawed" because of the allegedly misleading notice, and that the Board's March 6 vote, "purportedly predicated in part on the public's testimony at the hearings," was therefore made in violation of lawful procedure. (R26.) There was no finding (as there were no underlying allegations, nor could there be) that funds were used for any improper purpose.

The lower court declared both the notice of hearing and the March 6 MTA Board vote invalid. (R27.) The court further vacated the determination to raise fares,[10] remanded the matter to the MTA to undertake "all necessary procedures, including new hearings," and stated that "the May 2003 fare increases implemented pursuant to the Board's March 6 determination will be rolled back to the date of the increase" within two weeks from the date of the court's decision. (R27-28.)

The MTA filed a Notice of Appeal the following day, May 15, 2003, invoking the statutory stay provisions of CPLR § 5519(a)(1) and PAL § 1212-a(3). (R4.) Almost one week later, on May 21, 2003, petitioners filed a motion in this Court to vacate the stay. That application was made returnable on June 2, 2003. This matter now comes before this Court on an expedited briefing schedule pursuant to stipulation of the parties and order of the Court.

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[10] The court held that its decision did not apply to the Triborough Bridge and Tunnel Authority's raising of tolls, as that agency was not named in the petition. (R20.) On May 16, 2003, a new petitioner, the Automobile Club of New York, filed an Article 78 proceeding against the Authority and the MTA seeking to invalidate those fares and tolls premised on Justice York's decision. The Supreme Court, Justice Robert D. Lippmann denied petitioner's application for a temporary restraining order, and conducted a hearing on the merits of the petition on May 20, 2003 with additional briefing to be completed by May 26.

ARGUMENT

THE MTA COMPLIED WITH ALL REQUIREMENTS IMPOSED BY THE LEGISLATURE; THE LOWER COURT ERRED IN IMPOSING ADDITIONAL SUBSTANTIVE REQUIREMENTS

A. The MTA Complied With the Applicable Statutes

Public Authorities Law § 1266[3] vests the MTA with broad authority and responsibility to establish fares "as may in the judgment of the [MTA] be necessary to maintain the combined operations . . . on a self-sustaining basis." *See also* PAL § 1205[5] (regarding NYCTA). In setting fares, the MTA engages in a quasi-legislative function, subject to review, "if at all," under CPLR Article 78, "in the nature of mandamus to review." *See N.Y.C. Health & Hosps. Corp. v. McBarnette*, 84 N.Y.2d 194, 203 n.2 (1994).

The court below acknowledged that its role is limited to ensuring "that the other two branches of government are complying with their legal mandates." (R18.) It acknowledged that it is "'ill equipped to run a railroad' and has no power to evaluate an MTA decision that a fare increase is economically necessary." (R18, *quoting Stein v. MTA*, 110 Misc. 2d 1027, 1029 (Sup. Ct. Nassau Co. 1981).) The lower court, however, clearly departed from its own articulated standards and failed to take heed of the strictly limited nature of judicial review of administrative actions, particularly those of a quasi-legislative nature. *See McBarnette*, 84 NY.2d at 203 n.2.

In analyzing the issues presented, the initial focus of the lower court's inquiry was the "'procedural safeguards which have been developed to protect the citizenry'" (R18-19 (*quoting Stein*)), here expressly set forth in PAL §§ 1263[9] and 1205[7], and quoted by the court. (R21.) Given the court's conclusion that "[i]t is undisputed that the Notice complied with these requirements in a technical sense" (*id.*), its ultimate conclusion on this record was not merely wrong,

but an unprecedented attempt to exercise supervisory judicial authority over a process statutorily delegated to the agency. *See Klosterman v. Cuomo*, 61 N.Y.2d 525, 541 (1984) ("The activity that the courts must be careful to avoid is the fashioning of orders or judgments that go beyond any mandatory directives of existing statutes and regulations and intrude upon the policy-making and discretionary decisions that are reserved to the legislative and executive branches.").

The significance of the lower court's finding that appellants complied with the statutory requirements cannot be overcome by minimizing these requirements as "technical." The explicit statutory language is not a mere starting place for determining notice requirements, to be thereafter elaborated upon and crafted after the fact. Were that not so, government agencies could never perform their statutory duties with any degree of certainty for fear that reviewing courts would later purport to advance the "spirit" of the enabling legislation by imposing additional requirements. This is, of course, hornbook law: in construing statutes, "courts have no right to add to or take away from" the plain language. *Majewski v. Broadalbin-Perth Cent. Sch. Dist.*, 91 N.Y.2d 577, 583 (1998).

B. None of the Cases Relied on By the Lower Court Have Construed Public Hearing Requirements So Broadly As to Impose New Substantive Obligations on the Appellants

The notice and hearing requirements of the Public Authorities Law are designed to ensure that the public is able to comment on the *actual proposals* for fare increases and other actions being considered by the MTA Board. *See* PAL §§ 1263 [9](c) and (d), 1205[7](c) and (d). "All that the law requires is that the plan finally adopted must be derived from, and bear some reasonable resemblance to, the one initially proposed." *Stein v. MTA*, 110 Misc. 2d 1027, 1030 (Sup. Ct. Nassau Co. 1981) (construing PAL § 1266[3], citing *Tinsley v. Monserrat,* 26 N.Y.2d 110, 114 (1970)).

The notice/public hearing cases cited by the lower court do not alter that rule, or impose any additional requirements on the MTA. The court cited *Glen v. Rockefeller,* 61 Misc. 2d 942, 949 (Sup. Ct. N.Y. Co.), *aff'd,* 34 A.D.2d 930 (1st Dep't 1970), for the proposition that the right to a hearing is "based on the principle of fundamental fairness." (R22.) But the court there held that there was *no requirement in the applicable statute* for a public hearing prior to the Transit Authority's raising its rates. The court urged the legislature to adopt such a requirement, but recognized that it had *no power* to create one itself and accordingly dismissed an Article 78 proceeding that sought to compel such a hearing.

As recognized in *Education Broadcasting Corp. v. Ronan,* 68 Misc. 2d 776 (Sup. Ct. N.Y. Co. 1972), another case cited by the lower court, the manner of conducting public hearings is committed to the agency's discretion. Thus, in reviewing the sufficiency of notices and hearings, the courts have carefully limited themselves to determining whether the notice adequately informed the public of the *proposal being considered* and of the time and place for comment. In *Orbach v. New York State Urban Development Corp.*, 110 Misc. 2d 720 (Sup. Ct. N.Y. Co. 1981), for example, the court held a hearing was invalid because the UDC had failed to appoint a qualified person to attend the hearing and respond to questions. *See also Reizel, Inc. v. Exxon Corp.*, 42 A.D.2d 500, 506 (2d Dep't 1973) (zoning decision could be attacked "where no notice is given or the notice given is so deceptive that reasonable persons were duped into not appearing") (cited by lower court), *aff'd*, 36 N.Y.2d 888 (1975); *County of Rensselaer v. Capital Dist. Transp. Auth.*, 42 A.D.2d 445, 447 (3d Dep't 1973) (fare decision overturned due to failure to hold public hearing); *41 Kew Gardens Rd. Assocs. v. Tyburski*, 124 A.D.2d 553, 554 (2d Dep't), *leave to appeal denied*, 68 N.Y.2d 612 (1986) (notice of hearing contained erroneous date) (cited by lower court).

Where the notice and hearing meet the requirements of the applicable statute, there is no basis for further judicial inquiry. In *Gernatt Asphalt Products v. Town of Sardinia*, 87

N.Y.2d 668 (1996) (cited by the lower court), for example, the court held that, despite the petitioners' misinterpretation of the notice of hearing, the notice in fact sufficiently alerted the public to the proposed changes being considered. *See also Forest Hills Residents Ass'n v. N.Y.C. Hous. Auth.*, 39 A.D.2d 64 (1st Dep't 1972) (reversing lower court and dismissing petition because *plan adopted was not such a substantial deviation* as to sustain a challenge to underlying public hearing); *Levine v. Long Island R.R. Co.*, 38 A.D.2d 936, 938, (2d Dep't) (no new public hearing required because plan adopted by MTA "*bears a reasonable relationship to* and is derived from" proposal presented at hearing (citing *Tinsley*)), *aff'd*, 30 N.Y.2d 907 (1972) (emphasis supplied).

There is no dispute here that the notice of public hearing advised the public of the precise actions under consideration – increasing fares and tolls and closing of station booths. (R61-67.) That is precisely what the statutes (§ 1263[9](c) and (d)) and § 1205[5](c) and (d)) and the relevant cases require. Nothing in the notice defeated the public's right to attend the hearings at which, in reality, several hundred speakers were heard on the precise matters that the MTA Board then considered and adopted on March 6 – increasing fares and tolls and closing certain station booths. (*See* R61, R1797-99, ¶¶ 6-11, R1731, ¶ 18.) No case of which we are aware supports the lower court's determination, on this uncontroverted record, to void the MTA's decision based upon a notice that clearly advised the public of the proposed actions under consideration.

The lower court nonetheless accepted petitioners' argument that, in effect, the MTA was somehow obligated to present its financial plan in terms of a one-year alternative, even though it was only considering a two-year plan. No such requirement remotely exists in the governing legislation, and the courts have no power to create requirements that the Legislature has not seen fit to enact. *See N.Y. State Inspection v. Cuomo*, 64 N.Y.2d 233, 239 (1984) ("The lawful acts of executive branch officials, performed in satisfaction of responsibilities conferred by law, involve questions of

judgment, allocation of resources and ordering of priorities, which are generally not subject to judicial review.").

C. The Record Does Not Support Any Finding That the Notice Was Misleading.

Unable to predicate its determination to overturn the MTA Board's decision on a violation of the actual statutory requirements, the court below accepted at face value unjustified charges of "fiscal impropriety," and held that the public hearings were unlawful because:

> The court finds that the hearings were based on the false and misleading premise that the MTA was in worse financial condition than it knew itself to be, and that the Notice wrongfully relegated the public to the role of assisting the MTA in closing a "budget gap of $2.8 billion" *which did not exist*, and presenting their views on the three options based on their misinformation about that *fictitious* gap.

(R24 (emphasis supplied).) There is absolutely no support or explanation for these conclusions. Not only did the court create an unprecedented legal standard in evaluating the adequacy of the public hearing process (*compare* cases cited, *supra,* at 22-24), but its conclusory findings were erroneous and self-contradictory.[11]

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[11] In this regard, it should be emphasized that three independent bond rating agencies – whose function it is to advise the investment community regarding the credit worthiness of billions of dollars of MTA debt – were unimpressed with the allegations of fiscal impropriety contained in the Comptroller's Report that the court below relied upon to void the fare increases. In ratings reports issued *after* the Comptroller's report and the filing of this litigation, each of the three rating agencies maintained the MTA's ratings. (*See* R1732-33, ¶¶ 21-23; R1784-93.) Standard & Poor's, for example, characterized the MTA as having had a "strong management track record of maintaining fiscally prudent operations . . . ." (R1784.) Just as the rating agencies were not swayed by

(footnote cont'd)

(1) The Multi-Billion Dollar Budget Gap is Undisputed

Contrary to the lower court's key finding, for which it offers no support, that the $2.8 billion budget gap "did not exist" and was "fictitious" (R24), the record is uncontroverted – and the Comptroller acknowledges – that there is a multi-billion gap for the remaining two years of the MTA's financial plan, 2003-2004. (R273; R1443; R1525, ¶ 4; R1729.) The Comptroller's Report only questioned, in vague terms, approximately $200 million of this gap, thus conceding the multi-billion dollar deficit. (R1443.) The MTA's chief budgetary officer confirmed the existence of the $2.8 billion gap, and explained the specific budgetary efforts taken by the MTA to close it. (R1526, ¶ 8; R1729-30, ¶¶ 9-12. *See generally* pp. 8-10, *supra*.) The decision below makes no reference to this evidence. Ultimately, since there is no dispute regarding the legal obligation to close the gap and the existence of a two-year deficit (beyond an immaterial and non-justiciable "battle of the experts" regarding the exact amount, *i.e.*, $2.6 or $2.8 billion), the only issue for the MTA was the *timing* of the fare increase and other measures – matters that are unquestionably entrusted to the MTA's "judgment" by PAL § 1266[3].

While acknowledging that it would have been imprudent to apply all cost savings to 2003, the Comptroller stated that there was more "flexibility in the size and timing of the fare hike than was acknowledged by the MTA." (R1428; R1449.) In so doing, the Comptroller only highlights the MTA's point that, in the final analysis, the Comptroller's findings concern matters of judgment that are entrusted to the MTA by statute. (R1535, R1531.) While there are literally "endless

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the Comptroller's and petitioners' strident language, the court below should not have accepted at face value baseless allegations of "wrongdoing" in order to justify intrusion into the MTA's quasi-legislative functions.

combinations" of fare policy options (as the Comptroller remarked (R1428)) relating to the base transit and rail fares, MetroCard-related discounts and the like, it cannot be seriously contended, under this statutory scheme, that a judicial challenge could be predicated on the MTA's judgment as to which of the infinite number of policy and operational measures it could adopt to address its budget deficit. In this regard, as explained in the unrebutted affidavit of the MTA's budget director (R1528-29, ¶ 14) and the Response (R1535), had the fare hike been delayed until 2004, a substantially greater increase would have been required.

(2) There Was No "Hiding" of $512.5 Million

Citing the Comptroller's Report, the lower court found that the MTA ended the 2002 budget year with a surplus of $537.1 million, rather than the $24.6 million that the MTA reported in the December Plan as a "cash balance," and that the difference of $512.5 million was allocated to 2003-2004. (R23.) From this, the court somehow reasoned that the magnitude of the $2.8 billion budget gap for 2003-2004 disclosed to the public was "false and misleading" and, in fact, the budget gap was "fictitious." (R24.) The court's conclusion was internally inconsistent and erroneous.

In the first instance, the court acknowledged (R23) that the $512.5 million of cash available at the end of 2002 was applied to 2003 and 2004. (R1534; R1544-45; R1528, ¶ 13.) The money did not "disappear" from the budget and was not "shifted" out of 2002 in some nefarious way. As a cash balance remained at the end of 2002, it was prudently determined to allocate this money over the two years remaining in the financial plan rather than applying it all to 2003. The court's reliance upon the $512.5 million in reaching its conclusion that "the hearings were based on the false and misleading premise that the MTA was in worse financial condition than it knew itself to be" and that the $2.8 billion budget gap was "fictitious" (R23-24) is thus simply inexplicable.

Indeed, the lower court's decision finds absolutely no support even in the Comptroller's Report. The Comptroller's criticism with reference to the $512.5 million, although presented in charged language, was simply that had *all* of the funds available at the end of 2002 been applied to 2003 rather than over the combined 2003-2004 period, there would not have been the need for a fare increase *in 2003*. But even the Comptroller conceded that applying all funds to 2003 would have been "imprudent" and "[u]se of these resources in 2003 . . . would have widened the 2004 budget gap by an equal amount." (R1428, 1449.) For the lower court to have parted company with even the Comptroller and to have found that allocating funds over two years rather than one meant that the two-year budget gap was "fictitious" is without the slightest shred of record support and is a fatal flaw that warrants that the decision be reversed.[12]

(3) There Was No "Secret" Plan

By obvious necessity, the actual financial plan submitted to the MTA Board for approval is a summary and distillation of the enormous volume of documents and electronic information that was accumulated, marshaled and analyzed in order to make the assumptions and judgments that constitute

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[12] The specific allocation of the $512.5 million is explained in the Comptroller's Report (R1448, Table 4) as well as the MTA's Response (R1534.) The MTA allocated $205 million to prepay debt servicing costs, including $65.8 million in 2003 and $139.2 million in 2004. It allocated an additional $182.5 million to fund projected interagency loans to New York City Transit and the commuter railroads over that two-year period, and allocated the remaining $125 million to an MTA account utilized to fund ordinary course business expenses over the two-year period. Each of these allocations is identified, in summary form, within the December Plan presented to the public and the MTA Board (R1533-34), and there is no allegation that the moneys were misused in any way. Petitioners' assertion that these allocations were "secret" and "hidden" because the line-item details are contained in the underlying budgeting materials, may attract headlines, but is entirely disingenuous and cannot justify judicial intervention.

the actual plan presentation document – a document that summarizes a nearly $8 billion operating budget including all of the MTA agencies. In fact, the "super spreadsheet" which was mischaracterized as a "second set" of books (R1170-1423), is nothing of the sort. It is simply a highly detailed version of the plan, encompassing 250 pages, designed for use by the professional budget staff. (R1170-1423, R1728, ¶ 7, R1533.) The facts presented are no more reflective of the maintenance of "two sets" of books (R1434) than any circumstance where there exists a distillation and summary of an underlying more detailed and extensive analysis and back-up.

(4) The Fare Increase Closed the Remaining Approximate $1 Billion Two-Year Budget Gap

In noticing the public hearings it was made explicit that, following other cost saving measures, the remaining budget gap to be closed by means of a fare increase was approximately $1 billion. (R61, R1528, ¶13, R1729-30, ¶¶ 12-13; *see also* R1958.) Similarly, it was repeatedly disclosed to the public that the budget gap was a *two-year* budget gap. (R61, R1528, ¶ 13; R1730, ¶¶ 13-16.) There was no suggestion or realistic possibility of confusion that the MTA was looking at 2003 on a stand-alone basis in proposing the necessary fare increase.

(5) The MTA Board Had the Essential Information

There is no basis in the record or otherwise for the court's conclusion that the MTA Board was presented with misleading financial information or that the MTA's "coffers contained over a half billion dollars" of which the Board was not aware.[13] (R26.) First and foremost, the allocation of cash

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[13] Here again, the court appears to be plagued with its misapprehension as to the treatment of the $512.5 million discussed above.

across a multi-year financial plan is a matter of judgment and discretion. (R1537, R1728, n.2.) There is no legal or other requirement directing when funds should be utilized. Here, the Board was fully apprised of the system's financial condition, particularly that resources available at the end of 2002 were being allocated over the remaining two-years of the financial plan, rather than all being utilized in 2003.[14] (R1730 ¶ 13.) As explained above, the "half billion" dollars was not "missing," nor was there any basis for the court's conclusion that "the numbers themselves are wrong." (R26.) There is simply no basis whatsoever for concluding that the MTA Board was misled on these or any other points. Nor does the court even purport to cite support for this erroneous conclusion.

In sum, the issues of "fiscal impropriety" were non-issues. We respectfully urge this Court to reverse and set aside the lower court's erroneous findings that are wholly unsupported in the record.

D. The Court Exceeded the Permissible Scope of Review In An Article 78 Proceeding.

As explained above, the basis for the court's conclusion that the public notice misrepresented the MTA's financial condition emerges as nothing more than the MTA's purported failure to disclose expressly that money available at the end of 2002 had been allocated to both 2003 and 2004 and what the budget would have looked like had the MTA "imprudently" (R1428) allocated all available funds to 2003. Thus, the court's finding of "misrepresentation" had nothing to do with a failure to comply with "procedural safeguards" as

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[14] Indeed, the Comptroller's Report asserts only that MTA personnel could not recall *when* the Board was informed; the deposition transcript cited for this proposition confirms that the Board *was* informed during the budget process and prior to the March 6 vote. (*See* R1435, n.3 and deposition excerpt cited therein.) There is no basis for the court's statement that the MTA Board was uninformed or misinformed.

highlighted at the outset of its analysis (R18-19), but was rooted only in its criticism that the MTA, in determining the need for a fare increase and station booth closings, did not present a one year financial plan in addition to or instead of the two year plan it had actually adopted. The court thus intruded upon a quintessentially discretionary agency decision, in derogation of the legion of Article 78 cases holding that courts must not substitute their judgment for that of the government officials. *See, e.g., Akpan v. Koch*, 75 N.Y.2d 561, 570 (1990) ("[w]hile judicial review must be meaningful, the courts may not substitute their judgment for that of the agency for it is not their role to 'weigh the desirability of any action or [to] choose among alternatives'") (citation omitted); *see also Jones v. Beame*, 45 N.Y.2d 402, 407 (1978) (judicial process not appropriate to "intervene and reorder priorities, allocate the limited resources available, and in effect direct how the vast municipal enterprise should conduct its affairs"); *Abrams v. New York City Transit Auth.*, 39 N.Y.2d 990, 992 (1976) ("questions of judgment, discretion, allocation of resources are inappropriate for resolution in the judicial arena. . . .").

* * *

Stripped of the rhetoric, the allegations of fiscal impropriety advanced by petitioners, and accepted at face value by the lower court, are, at best, nothing more than a disagreement with the MTA's due exercise of its judgment to engage in its multi-year financial planning process, rather than to present a "quick-fix" one-year budget (and thereby leave the public with what would likely be a significantly larger fare increase in 2004).

Having concluded that the MTA met the statutory standards regarding the notice of hearings (R21), the court's further implicit findings that the budget should have been presented to the public in terms of a one year plan rather than (or in addition to) the two-year plan *that was actually being utilized*, no matter how pejoratively characterized, cannot constitute a basis for voiding the MTA's quasi-legislative

decision-making in establishing the fare and other related actions.[15] Neither the form nor the magnitude of the disclosures ultimately required by the court below have any basis in the Public Authorities Law or Article 78.

For all the reasons stated above, the lower court's decision should be reversed and the amended petition dismissed.

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[15] The Comptroller's Report itself recommends the promulgation of new rules and legislation, effectively acknowledging that the issues presented in this case are properly committed to the executive and legislative branches of government. (R1469-70.)

CONCLUSION

The judgment of the lower court should be reversed, and the amended petition dismissed with prejudice.

May 23, 2003

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